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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,527	12/08/2003	Craig L. McAllester	P03825	3702
28548	7590	10/21/2004		
STONEMAN LAW OFFICES, LTD 3113 NORTH 3RD STREET PHOENIX, AZ 85012				
			EXAMINER FULTON, CHRISTOPHER W	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/731,527

Applicant(s)

MCALLESTER, CRAIG L.

Examiner

Christopher W. Fulton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it contains more than one paragraph.

Correction is required. See MPEP § 608.01(b).

### *Drawings*

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the roof representation of claim 42 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be

renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5, 7, 13, 15-23, 26-28, 31, 34, 36, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamernick.

The device as claimed is disclosed by Hamernick with at least two calibrated indicia means 6 for indicating angular slope on a replaceable dial 5, a multiple-indicator means 12,13 for providing at least two simultaneous indications with respect to the indicia means, a gravity-assisted positioner means 13 for maintaining essentially by gravity the position of the multiple-indicator means with respect to the vertical, abutting means (bottom of 16 angled at 90 degrees) for abutting the element having the slope to be determined, and geometry-control means (gripable

frame 16 connecting the bottom of 16 to the indicator) for controlling the geometry of the indicia relative to the abutting means.

With respect to claims 5 and 21 no limiting structure is presented that further defines the device. The limitations are merely that the scale is viewable from above the device which is clearly disclosed by Hamernick.

With respect to claim 28 the bottom of the frame 16 is angled at 90 degrees to the sides of the device.

6. Claims 1-3, 5, 6, 10, 11, 13, 15-23, 26-28, 31, 34, 36, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Bateman.

The device as claimed is disclosed by Bateman with at least two calibrated indicia means 62,64 for indicating angular and rise/run of 12 inches slope on the frame, a multiple-indicator means 90,98 for providing at least two simultaneous indications with respect to the indicia means, a gravity-assisted positioner means 96 for maintaining essentially by gravity the position of the multiple-indicator means with respect to the vertical, abutting means (14 angled at 90 degrees or 18 at an angle other than 90 degrees) for abutting the element having the slope to be determined, and geometry-control means (gripable by apertures frame 14 connecting the bottom of 14 to the indicator) for controlling the geometry of the indicia relative to the abutting means.

With respect to claims 5 and 21 no limiting structure is presented that further defines the device. The limitations are merely that the scale is viewable from above the device which is clearly disclosed by Bateman.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 8, 9, 29, 32, 33, 35, 37, 40, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamernick.

The device as claimed is disclosed by Hamernick as stated in the rejection recited above for claims 1-3, 5, 7, 13, 15-23, 26-28, 31, 34, 36, and 38, but lacks the size of the diameter of the scales being between two and twelve inches, the scales being on the protective cover, the specific material claimed of the frame, and the claimed printed subject matter.

Lacking criticality the size of a device is not considered a patentably distinct feature. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the scales of Hamernick any desired diameter to provide a scale with the desired accuracy. Relocation of existing parts lacking some criticality is not considered a patentably distinct feature. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to relocate the scales of Hamernick from the dial to the protective cover as an alternative location of the scale which provides a similar relative location with respect to the indicator. Plastic and metal are old and well known materials to make slope indicators with to provide the desired strength and weight. Therefore, it would have been obvious

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to one of ordinary skill in the art at the time the invention was made to use any desired old and well known material (such as plastic or metal) in Hamernick to provide the device of Hamernick with the desired strength and weight of the known materials. It is old and well known to use printed matter such as logos, text, or shapes for descriptive matter in relation to an existing device which does not affect the function of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place any desired printed matter on the device of Hamernick such as logos, text, or shapes which do not effect the function of the device.

9. Claims 4, 8, 9, 12, 14, 29, 32, 33, 35, 37, 40, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bateman.

The device as claimed is disclosed by Bateman as stated in the rejection recited above for claims 1-3, 5, 6, 10, 11, 13, 15-23, 26-28, 31, 34, 36, 38, and 39, but lacks the size of the diameter of the scales being between two and twelve inches (along with the scales division having a run of one-eighth-inch), the scales being on the protective cover, the specific material claimed of the frame, and the claimed printed subject matter.

Lacking criticality the size of a device is not considered a patentably distinct feature. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the scales of Bateman any desired diameter to provide a scale with the desired accuracy (starting at one-eighth-inch). Relocation of existing parts lacking some criticality is not considered a patentably distinct feature. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to relocate the scales of Bateman from the dial

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to the protective cover as an alternative location of the scale which provides a similar relative location with respect to the indicator. Plastic and metal are old and well known materials to make slope indicators with to provide the desired strength and weight. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any desired old and well known material (such as plastic or metal) in Bateman to provide the device of Bateman with the desired strength and weight of the known materials. It is old and well known to use printed matter such as logos, text, or shapes for descriptive matter in relation to an existing device which does not affect the function of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place any desired printed matter on the device of Bateman such as logos, text, or shapes which do not effect the function of the device.

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bateman in view of Eltag.

The device as claimed is disclosed by Bateman as stated in the rejection recited above for claims 1-3, 5, 6, 10, 11, 13, 15-23, 26-28, 31, 34, 36, 38, and 39, but lacks a brake to lock the slope reading in place until read.

Eltag teaches using a brake 19 to lock the reading of a slope indicator in place to slow the oscillating of the indicator to provide a quicker readout. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a brake means in Bateman as taught by Eltag to fix the slope reading in place when desired to quicken the reading of the slope indication.



11. Claims 25 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bateman in view of Webb.

The device as claimed is disclosed by Bateman as stated in the rejection recited above for claims 1-3, 5, 6, 10, 11, 13, 15-23, 26-28, 31, 34, 36, 38, and 39, but lacks a laser to extend the baseline of the frame member.

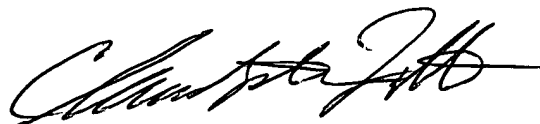
Webb teaches using a laser 42 in combination with a leveling device to extend the baseline of the frame member. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a laser in the frame of Bateman as taught by Webb to extend the baseline of the frame member.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-Th 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

CWF



Christopher W. Fulton  
Primary Examiner  
Art Unit 2859